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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,200	08/02/2005	Christian Hentschel	BAI525-216/08239	8386
24118	7590	05/14/2010	EXAMINER	
HEAD, JOHNSON & KACHIGIAN 228 W 17TH PLACE TULSA, OK 74119				CZEKAJ, DAVID J
ART UNIT		PAPER NUMBER		
2621				
MAIL DATE		DELIVERY MODE		
05/14/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/544,200	HENTSCHEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DAVID CZEKAJ	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 August 2005 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____ .                                     |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/2/05</u> .  | 6) <input type="checkbox"/> Other: ____ .                         |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent and recent Federal Circuit decisions indicate that a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim recites a series of steps or acts to be performed, the claim neither transforms underlying subject matter nor is positively tied to another statutory category that accomplishes the claimed method steps, and therefore does not qualify as a statutory process. For example, it is unclear what performs, in electronic form, the receiving, processing, and determining steps recited in the method claims.

Claims 1-9 and 19-20 are rejected under 35 U.S.C. 101 because the claims recite software modules (the processing steps) that are not embodied within a computer readable medium, thus directing the claim to non-statutory subject matter.

Claims 1-18 rejected under 35 U.S.C. 101 because the claims have improper language regarding the computer readable medium (Please see the MPEP 2106 Section IV. Determine Whether the Claimed Invention Complies with

35 U.S.C. 101). The claims fail to disclose what executes the program for performing the operations. The examiner suggests changing the preamble to a computer-readable medium encoded with (stored thereon, embedded with or embodying) a computer program, causing the computer to execute: "Linking words such as including, comprising, listing and having, are not acceptable as a substitute term for "encoded with".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Elbers et al. (5925104), (hereinafter referred to as "Elbers").

Regarding claim 1, Elbers discloses an apparatus that relates to storing multimedia application information (Elbers: column 1, lines 23-25). This apparatus comprises "receiving input into one scalable media algorithm" (Elbers: figures 1-3 and 5), "processing the input data" (Elbers: figures 1-3), and "determining a quality indicator value for an amount of data processed associated with the scalable media algorithm based on the processing for the algorithm" (Elbers: column 5, lines 40-67).

Regarding claim 2, Elbers discloses "distributing assets to the algorithm based on the quality indicator values" (Elbers: column 6, lines

5-15, wherein the distributing is the determining which processing unit performs the processing).

Regarding claim 3, note the examiners rejection for claim 1.

Regarding claim 4, Elbers discloses “the processing is priority processing” (Elbers: column 5, lines 1-10).

Regarding claim 5, Elbers discloses “analyzing the amount of processing and processed data, determining a class based on the analyzed amount, and assigning an indicator based on the class” (Elbers: figure 5; column 4, lines 53-67).

Regarding claim 6, Elbers discloses “processing the data based on the assets, determining a new indicator associated with each algorithm based on the processing, and redistributing assets based on the new indicator” (Elbers: figure 5; column 4, lines 53-67).

Regarding claim 7, Elbers discloses “providing a quality level and allocating assets based on the level” (Elbers: column 4, lines 53-67).

Regarding claim 8, Elbers discloses “the predetermined quality level is based on user input” (Elbers: figure 3, item 50).

Regarding claim 9, Elbers discloses “the algorithm is selected from a group of: video, graphics, and audio” (Elbers: figure 5).

Regarding claims 10-18, note the examiners rejection for claims 1-9.

Regarding claims 19-20, note the examiners rejection for claims 1-2.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US-2003/0058942 3-2003 Hentschel et al.

US-6493386 12-2002 Vetro et al.

US-6674800 01-2004 Peng

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID CZEKAJ whose telephone number is (571)272-7327. The examiner can normally be reached on Mon-Thurs and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on (571) 272-7418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dave Czekaj/  
Primary Examiner, Art Unit 2621